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CONTENTS

CURRENT TOPICS

Bailiffs

IN our issue of 22nd June we quoted from the Memorandum submitted by the Council of The Law Society to the Working Party to enquire into the efficiency of the bailiff system in the county courts. The Lord Chancellor's Office has drawn our attention to the fact that the Council qualified their criticisms so far as they concerned warrants of execution and judgment summonses in respect of small sums, and that the Working Party in their Report (which is not on sale to the public) did not accept the whole of The Law Society's complaints. Rules to give effect to some of the recommendations of the Working Party are expected almost immediately but in the meantime we are reproducing on p. 536 of this issue the relevant paragraphs from the Report.

Holidays with Pay: A New Point

A NEW decision on one of the legal problems arising out of contemporary holidays with pay arrangements came from His Honour Judge BLAGDEN at Westminster County Court on 25th June, 1957 (*Yardley* v. *E. Laws & Co., Ltd.*, *The Times*, 26th June.) A branch manager of a company owning a chain of grocery shops was given a week's notice in August, the day before he was to start his holiday, to expire in the middle of his holiday. It was argued on his behalf that he was entitled to his full week's wages of £15 in lieu of notice, in addition to a full holiday with pay, and that the notice was bad. The learned judge said that, strangely enough, there was no direct authority on this point. The real objection from the servant's point of view was not so much that he lost money, but that it spoiled his holiday. The object of the notice so far as the servant was concerned was to enable him to get a new job. He held that the notice was good but awarded the plaintiff £5 18s. 4d. holiday pay owing to him.

Local Government Reorganisation

ADDRESSING the conference of the Rural District Councils Association on 19th June, the MINISTER OF HOUSING AND LOCAL GOVERNMENT said he hoped that a local government reorganisation Bill would be ready in the autumn. Among other matters, he mentioned the review of county districts. There was no danger, he said, that county councils would treat a suggested minimum population figure as a hard-and-fast minimum, and he was quite sure that when the reviews were completed there would still be a number of small districts. He would not suggest minimum figures until he heard what was said in Parliament, but he believed that the suggestion that there should be minimum figures was in the public

interest. As to functions, it was proposed to transfer the present county council functions of local health and welfare services to urban authorities with populations of 60,000 and upwards. As to finance, he said that it was very desirable that the growing dependence of local authorities on specific earmarked grants should be halted. Their aim was to substitute a general grant for certain percentage grants. The next White Paper would reveal how it was intended to work the proposals and would confirm that for the first time Exchequer equalisation grant is to be paid direct to county councils.

The Rent Act and the County Courts

As this issue is published the Rent Act, 1957, comes into force, and so far as matters arising under it and the remaining *corpus* of Rent Restrictions Acts come within the county court jurisdiction, procedure in those courts will henceforth be regulated by the Rent Restrictions Rules, 1957 (S.I. 1957 No. 1137 (L.9)) which replace the existing rules of that name, subject to the latter's continued application to pending proceedings. We hope to deal in a later issue with the new rules, but it may be noted now that, in future, proceedings under the rules will be by originating application in respect of which a court fee of 10s. will be payable under the County Court Fees (Amendment) Order, 1957 (S.I. 1957 No. 1146).

The Act Explained

A *Daily Mail* publication entitled "The New Rent Act: How It Affects Tenant and Landlord" provides, for the modest price of 2s., 52 pages of exposition, illustration, question and answer. Mr. R. E. MEGARRY, Q.C., in a foreword, states that the author (Mr. R. B. ORANGE, M.A. Oxon) "has done all that can be done to make the new Act intelligible both to Thomas Tenant and Leslie Landlord, and to Sally Sub-Tenant as well." "As the author points out" (Mr. Megarry continues), "there are a number of complications and exceptions . . . a landlord or a tenant may find that failure to consult a solicitor on such points will cost him dear." The booklet, he says, gives warning of many of the exceptional cases on which legal advice is necessary. Mr. Megarry concludes: "Any lawyer can utter learned obscurities, and some do: but it takes a touch of genius to achieve the brevity, simplicity and lucidity of this little book."

Insurance against Damage from Radioactivity

THE beginnings of what may well become a new branch of insurance law are to be seen in a report issued on 24th June by the advisory committee of the British Insurance (Atomic Energy) Committee, set up in October, 1955. The report is addressed to the British insurance market. The committee are of the opinion that "the risks involved are insurable." They recommend that maximum cover should be provided to the reactor owner in respect of third-party liabilities arising from radioactive contamination, both in respect to damage to property and personal injury. In view of the high value of power reactors it is recommended that the whole insurance market should collaborate to provide maximum protection. The reactor owner should be covered for third-party liability, and thus members of the public would not need any specific cover against those risks. The report states that counsel has given his opinion that it is possible that the courts might hold that some existing policies cover risks of radioactive contamination. The committee state that the marine and aviation insurance markets will have to face similar insurance problems in the future.

Licensing Reform

REFORM of the licensing laws was urged by Mr. ARTHUR SELDON in an article in *The Times* of 17th June, in which he pointed out that it is a quarter of a century since the Royal Commission on Licensing under the first Lord Amulree published its report approving the existing licensing controls. "In view of the profound social and economic changes since 1931 it could not possibly have sustained that view in 1957," Mr. Seldon wrote. Clear evidence that the licensing system is out of tune with the times is the growth of the clubs—from 6,500 in 1905 to 13,500 in 1930, and about 22,000 to-day. Mr. Seldon was against control of clubs like that mooted in the debate on 24th May on the Children and Young Persons (Registered Clubs) Bill because the club is a private meeting place, and the vast majority of them are well conducted. The club movement, he wrote, is a revolt against restrictive licensing, and repression would drive people elsewhere. He suggested reforms to produce greater equity between one district and another and greater flexibility in the service. Anachronisms like the exaction of monopoly value, the law on the physical structure of licensed premises, the frequently cautious procedure for the grant of new licences, removals, transfers, permission for structural alterations, etc., all call for reform, and indicate its general direction. To indicate specific changes, he said, would require exhaustive study of the system as a body of law and as a department of public administration.

Housing and Office Accommodation

THE report of the Ministry of Housing and Local Government for 1956 (published 26th June, 1957, H.M. Stationery Office, 6s. net) is a fascinating document not only because of the review of the Ministry's wide range of activities in 1956 which it contains, but also because of its progressive outlook. Permanent dwellings completed in England and Wales during 1956 numbered 269,000, of which 119,585 were built by private builders. Another interesting figure which we select from the report is that of £69 million lent to private individuals under the Small Dwellings Acquisition and Housing Acts, compared with £49 million the previous year. Eighteen development plans approved during the year included plans for Lancashire, Middlesex, Bristol, Plymouth, Portsmouth, Southampton and the Lake District. Town planning appeals disposed of rose from 5,540 in 1955 to 6,535 in 1956. In the course of an examination of Greater London planning, it is pointed out that suburban population has been stabilised at about a quarter of a million above that proposed in the Greater London Plan, and the Green Belt population has become 183,000 higher than that proposed in the plan. The report suggests that some of the office employment in Central London should be encouraged to move out to the suburbs and new towns. It states that efforts are being made through the County of London Development Plan to limit the extent of further office development in Central London. Talks are proceeding between the Ministry and planning authorities to ensure that all possible help will be given to those wishing to move offices to the suburbs and new towns.

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THE RENT ACT, 1957—IV

Continuing the series of articles by R. E. MEGARRY, Q.C.

LAST week I examined how the rent limit is determined initially, and mentioned the four heads under which this may be subsequently varied. I must now look at the first (and most complex) of these four heads, namely, certificates of disrepair.

5. CERTIFICATE OF DISREPAIR

A tenant who obtains a certificate of disrepair will put his landlord at a serious disadvantage in a number of respects. Before considering these, however, the process of conception, birth and death of a certificate must be examined. Certificates of disrepair issued under the Acts of 1923 or 1954 are, indeed, treated as if they were certificates under the Act of 1957 (Sched. VII, para. 3 (1)); but a tenant who lacks such a certificate and seeks one under the Act of 1957 must tread the long and tortuous road laid down by Sched. I, Pt. II. The matter may be taken by stages.

Stage 1: *tenant's notice.*—The tenant must serve a notice on the landlord in Form G. This notice must specify the individual defects by reason of which the tenant regards the premises as being in disrepair, and it must state that these defects ought reasonably to be remedied, and request the landlord to remedy them (Sched. I, para. 3). The tenant should keep at least one copy in case he needs it for Stage 3. When the dwelling is part of a larger dwelling, any disrepair of the roof, staircase or other common parts will usually be treated as disrepair of the dwelling (*ibid.*, para. 13).

Stage 2: *landlord's consideration.*—The landlord then has six weeks in which to give the tenant an undertaking (in Form H) to remedy all the defects specified in the tenant's notice, or some of them, if the tenant has agreed in writing to waive the others (*ibid.*, para. 4 (1)). If he gives this undertaking the tenant can proceed no further towards obtaining a certificate, and the landlord has in effect a further six months from the time when he gave the undertaking in which to honour it; but if, when the six months expires, any of the specified defects remain unremedied, the result is what may be called a "deemed certificate," i.e., the same consequences follow as if a certificate had been issued at the end of the six months (*ibid.*, para. 8 (1)). If, on the other hand, the landlord fails to give the undertaking within the six weeks, Stage 3 follows.

Stage 3: *tenant's application.*—The tenant applies to the local authority in Form I, enclosing a copy of the notice which he served on the landlord, and asking for a certificate of disrepair (*ibid.*, para. 4 (1)). He must send a fee of 2s. 6d., but he can deduct this from the rent if he gets his certificate (*ibid.*, para. 12 (1)).

Stage 4: *local authority's consideration.*—The local authority then considers the application, and if it is proposed to issue a certificate the local authority must first serve a notice in Form J on the landlord specifying the defects to which it is to relate (*ibid.*, para. 5). These specified defects may be any or all of those in the tenant's notice, but may not be any not specified by the tenant (see *ibid.*, para. 4 (2)).

Stage 5: *landlord's consideration.*—The landlord now has a further three weeks in which to give an undertaking (this time in Form K) to remedy the specified defects. If he gives it, then no certificate can be issued (*ibid.*, para. 5), and the consequences of dishonouring the undertaking are as in Stage 2. However, unlike Stage 2, in certain cases the undertaking may be rejected (*ibid.*, proviso). The local authority may reject an undertaking proffered by a landlord who, e.g., has dishonoured a previous undertaking for this or any other dwelling in the area of the local authority, or has been convicted of non-compliance with a nuisance order under the Public Health Act, 1936, s. 95 (even, it seems, if this was outside the area of the local authority).

Stage 6: *issue of certificate.*—If the tenant has survived this far, and the local authority still considers that the premises are in disrepair by reason of specified defects and that any or all of these ought reasonably to be remedied, it must issue a certificate in Form L (*ibid.*, para. 4 (2)). The certificate must not relate to any defects in internal decorative repairs unless the landlord is contractually liable for them, or has elected to be responsible for them; but if the tenant's application for a certificate states that this is the case, the local authority (which, as we shall see, is not concerned to investigate who is responsible for defects) is to act on this statement (*ibid.*, para. 11 (1), (2)).

Stage 7: *cancellation of certificate.*—Once a certificate has been issued the landlord may at any time apply to the local authority (in Form M, with a fee of 2s. 6d.: *ibid.*, para. 12 (3)) for the certificate to be cancelled on the ground that the defects have been remedied. If the landlord does this, the local authority must serve on the tenant a notice (in Form N) to the effect that it is proposed to cancel the certificate unless he objects within three weeks on the ground that any defects have not been remedied (*ibid.*, para. 6 (1)); and, unless some justifiable objection is received within this time, the certificate is to be cancelled as from the date of the application, or any later date on which the defects were remedied (*ibid.*, para. 6(2)).

Disputes

Plainly, disputes between landlord and tenant may arise at any stage of these processes; and various provisions are made for resolving these disputes. Thus, if the landlord has given an undertaking, either landlord or tenant may apply (in Form O) to the local authority for a certificate (to be given in Form P) as to which defects, if any, remain unremedied; and such a certificate is *prima facie* evidence of the matters certified (*ibid.*, para. 8 (2), (3)). But the main provision relates to the county court, which in effect exercises a general appellate jurisdiction over the process. Thus, if the tenant complains that the local authority has wrongfully failed to issue a certificate (*ibid.*, para. 4 (3)) or has wrongfully cancelled a certificate (*ibid.*, para. 6 (4)), or if the landlord complains that the tenant was responsible for the defects (*ibid.*, para. 4 (4)) or that the local authority has wrongfully failed to cancel a certificate (*ibid.*, para. 6 (3)), an application may be made to the county court, which may make an appropriate order. But there is an important difference in approach between the local authority and the county court. The local authority is not concerned with any obligation as between landlord and tenant, or with the origin of any defect, whereas the county court is concerned with these matters, and must cancel a certificate as regards any defect for which the tenant is responsible (*ibid.*, para. 4 (4)). In a phrase, the basis on which these matters are to be approached is physical in the case of a local authority and legal in the case of the county court.

6. Effect of certificate of disrepair

Three important consequences follow from the issue of a certificate of disrepair: and certain other points must be mentioned.

(*a*) *Appropriate factor*

For any rent period beginning while a certificate of disrepair is in force, the "appropriate factor" is four-thirds, in place of seven-thirds, or twice, or any other factor; and the rent limit must accordingly be ascertained on a four-thirds basis. This is so even in those cases where, under s. 1 (3), the rent limit had been determined, not by the new formula, but by the recoverable rent under the old law by reason of this exceeding the rent limit under the new formula, and so becoming the rent limit (*ibid.*, para. 7 (2)).

(*b*) *Suspended notices of increase*

Not until six months have gone by will a notice of increase be safe from a certificate of disrepair. For if a notice of increase is served at any time during a period beginning six months before the tenant applies for a certificate of disrepair and ending with the cancellation of the certificate, the notice has no effect (except as to increases for rates or improvements) as regards any rental period beginning while the certificate is in force (*ibid.*, para. 7 (1)).

(*c*) *Invalid notices of increase*

A notice of increase is void (except as to increases for rates or improvements) if it is served while a certificate of disrepair is in force, unless it states that it will not take effect while the certificate is in force (*ibid.*, para. 7 (3)). (Form A contains an alternative clause to this effect, so the point is not likely to be overlooked in practice.)

(*d*) *Interim over-payments*

The period between the application for the certificate and the issue of the certificate may be lengthy, yet the issue of the certificate will show that the application was justified. The tenant will therefore usually have paid more rent than he should during this period, and he is accordingly given the right to recover these over-payments by aliquot deductions from each gale of rent due while the certificate is in force (*ibid.*, para. 7 (4)). Thus, if twelve weeks elapse between the application and the issue of the certificate, and the certificate achieves a reduction in rent from 20s. to 14s., the tenant may each week for the next twelve weeks deduct 6s. from the reduced rent of 14s., provided the certificate so long lasts. These over-payments are not made recoverable in any other way, and thus the landlord has an additional incentive to speed the repairs in that the deductions will cease when the certificate is cancelled.

(*e*) *Suspension of reductions*

If within three weeks of the issue of a certificate of disrepair the landlord applies to the county court for the total cancellation of the certificate, the rent recoverable for any rent period beginning before the proceedings are concluded is to be the same as if no certificate had been issued (*ibid.*, para. 7 (5)). Thus, a prompt challenge to a certificate may prevent it working any reduction of rent.

Next week I must turn to the other three heads under which the rent limit may be varied; fortunately these can be dealt with much more shortly than certificates of disrepair.

Common Law Commentary

PREMISES IN SIEGE

Over a hundred years ago the court had to consider the liability of a contractor who, by digging up the approach to premises in such circumstances that the approach to them was very dangerous, had virtually put the premises in siege, and the occupier, whilst negotiating this dangerous approach, suffered loss. A similar situation arose again in a case last year: *Riden* v. *A. C. Billings & Sons, Ltd., and Others* [1956] 3 W.L.R. 704; 100 Sol. J. 748.

A vital point in such a situation arises where the danger is obvious. On the one hand, the contractor is responsible for having created the danger; on the other hand, the person who attempts to brave the danger does so with knowledge of its existence. In the earlier case (*Clayards* v. *Dethick and Davis* (1848), 12 Q.B. 439) the court propounded the principle that a man should not be virtually imprisoned in his premises with the only alternative that he is forced to risk the hazard in order to carry on his normal activities. In last year's case the court was divided on the question whether the "state of siege" had really been created. This turned on the question whether alternative routes were practicable and reasonable.

The facts in Riden's case

The first defendants were contractors who had been employed to break up the approach to premises consisting of a sloping paved ramp constructed over the original footpath and steps leading to the front door, and to restore the footpath and steps. The premises had formerly been occupied by an invalid who used a wheelchair. There had been railings on either side of the steps but the contractors had removed them. On one side of the steps was an open basement area belonging to the premises in question (No. 25) and the workmen had erected a protective barrier on that side of the steps. But on the other side, where there was the open basement area of the next door premises (No. 26), nothing had been erected, according to the findings of the judge of first instance, Hallett, J. The workmen advised the wife of the caretaker to approach the front over the land of No. 26 and to climb up the open side of the steps to the front door.

By the evening of the second day of the work the stage reached was that the contractors had broken up the front half of the ramp and had placed rough rubble on it and a plank athwart the ramp. They had thrown broken stones and debris on to the forecourt of No. 25. The brother of the caretaker's wife put a plank down across the basement area of No. 26 next to the steps of No. 25 to make the approach easier (as he thought) but it meant that a person using it had to step up or down some three feet on the side nearest the house. Later that evening the plaintiff called to see the caretaker. It was 7.30 p.m. and dark. She was advised to use that access and, though seventy-one years old, successfully negotiated it. But when she came to leave later on, she either missed her footing or slipped, and fell into the basement of No. 26.

Alternative routes

A very important line of defence put forward by the contractors was that there were alternative routes which the plaintiff could have taken. Of these, Hallett, J., had found that only one was practicable and that was through the back door. But the back door was always locked at 5 p.m. by the persons in occupation of the premises and had not been used by the caretaker since he moved to the upper floor. The plaintiff, who had often visited the premises, stated that she had always used the front way since the back door had been regularly locked. Hallett, J., found that the use of the back way, in those circumstances, was not a reasonable alternative. On this point Roxburgh, J., in the Court of Appeal, differed from him and from the other lords justices.

Extent of contractor's duty

The next point of defence was as to the duty, if any, owed by the contractors towards the plaintiff. Some support for the proposition that no duty was owed by the contractors to persons who were strangers to the contract is to be found in the case of *Malone* v. *Laskey* [1907] 2 K.B. 141, where Fletcher Moulton, L.J., said, "No rights can be acquired under a contract except by parties to the contract."

But there is more than one way of disposing of that view expressed in *Malone* v. *Laskey*. In the first place the right sought to be enforced is not one which is claimed to arise from the contract: it arises in tort from the duty owed by the contractors towards those whom they might reasonably expect would be endangered by the work being done. In the second place it is inconsistent with *Haseldine* v. *Daw & Son, Ltd.* [1941] 2 K.B. 343. In any event, Denning, L.J. (as he then was), stated that it was founded on a fallacy and could not stand with *Haseldine* v. *Daw*.

Denning, L.J., mentioned numerous cases wherein contractors had been held liable for a dangerous state of things which they had created on other persons' premises. It will be recalled that in *Haseldine* v. *Daw* itself, lift maintenance engineers were held responsible to a visitor to the premises using the lift and suffering injury owing to the imperfect maintenance work of which the defendants had been guilty. Earlier in *Brown* v. *Cotterill* (1934), 51 T.L.R. 21, a monumental mason had put up a tombstone so negligently that it fell and injured a child, and he was held responsible.

Both Denning, L.J., and Birkett, L.J., accepted the application of *Clayards* v. *Dethick*, where contractors dug a trench along the approach to a mews. The approach was a private road some 56 feet long and 13 feet wide and was the only way by which the plaintiff could get to his stables. They threw up a pile of earth on one side. The trench was 6½ feet wide and, not being central, there was only 2½ feet left on one side and 4½ feet on the other. The pile of earth was on the wider side and was four feet high. The case is a clear-cut one when one considers what transpired between the parties prior to the accident. When the plaintiff asked for some planks the defendant, Davis, asked him what he was going to do and, on being told that the plaintiff was leading a horse out, said he would not be answerable for taking a horse over in the manner indicated by the plaintiff, viz., getting over on to the narrow side where there was no loose earth. Asked what he should do, Davis replied, "Take him over the other side and I will be answerable." Quite clearly it was dangerous to go over a pile of loose earth, and the defendant had warned him not to go over the narrow side. The plaintiff successfully negotiated an exit in that manner, but later that evening when trying again (over the loose earth) his horse fell into the ditch and was strangled in trying to get out. The contractors were held liable because it was unreasonable to expect that the plaintiff should be cut off from all access to his premises during the period of the work.

Plaintiff's knowledge of danger

By a majority, the Court of Appeal in *Riden* v. *Billings* (applying *Clayards* v. *Dethick*) held that the plaintiff's claim succeeded. As to the dissenting view of Roxburgh, J., it was to the effect that not only was there an alternative route, but that since the plaintiff was aware of the danger, having successfully negotiated the steps when she entered the premises, she was herself to blame. He rejected any notion that the Law Reform (Contributory Negligence) Act, 1945, had made any difference in the substantive law as to the duties owing. There is no duty to warn of a danger already known to the plaintiff; in such a case it is not a question of contributory negligence but of no cause of action.

If we may make a point on this aspect of the plaintiff's knowledge of the danger, we should say that where a person knows of a danger and successfully negotiates it without damage, the danger may thereby seem less than it really is. To prevent a plaintiff from succeeding because he has earlier shown a high degree of skill and agility (if that is the case) is to put a burden on the plaintiff. A danger remains a danger notwithstanding that it has earlier not given rise to injury.

Position of the occupier

The court discussed the case of *Thomson* v. *Cremin* [1953] 2 All E.R. 1185; [1956], 1 W.L.R. 103 (H.L.). That case was in fact decided in 1941, i.e., in the same year as *Haseldine* v. *Daw* but earlier. The House of Lords laid down in *Thomson* v. *Cremin* that an invitor owes a personal duty to invitees to see that the premises are free from unusual dangers, or to warn them. The duty being personal, the invitor is then liable for the negligence of independent contractors. A way round this apparently conflicting rule was suggested by Denning, L.J., viz., that *Haseldine* v. *Daw* was a case against the contractors whereas *Thomson* v. *Cremin* was against the occupier, so that there emerges a right of election.

Now that the Occupier's Liability Act has become law (it received the Royal Assent on 6th June) *Thomson* v. *Cremin* will be overruled as from 1st January, 1958, but its principle will not be completely disposed of. By s. 2 (4) (*b*) where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, maintenance or repair by an independent contractor employed by the occupier, the occupier is not to be treated as answerable for the danger "if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps (if any) as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done."

It may be therefore that there is an alternative right of action against either the negligent contractor or the occupier where he was not careful in entrusting the work to the contractor. But the latter right would be difficult to enforce since it cannot be easy to prove this. Moreover the last few words of the paragraph, "and that the work had been properly done", suggest that the section is concerned with dangers arising after the work has been completed and not dangers arising in the course of its execution. The fact is that s. 2 (4) (*b*) has prospectively taken the sting out of *Thomson* v. *Cremin*, and one will be left with one's right against the contractor.

L. W. M.

Company Law and Practice

THE PLACE OF THE MANAGER IN THE COMPANY HIERARCHY

THE purpose of this article is to make some attempt to consider how far the law recognises the special position and authority of the manager of a modern company.

It is first necessary to indicate what, exactly, is now meant by the term "manager." In the present article it will be taken to mean one who, in relation to the company, would be regarded, in normal commercial practice, as the principal person, other than a director, authorised to speak and act on behalf of the company. He is the principal officer of the company, by whatever name he may be called in the particular company. He is usually, but not necessarily, a salaried employee of the company, and need not devote his whole time to the affairs of the company. He may also be a director, but, for the purposes of the present discussion, it will be assumed that he is not.

There may sometimes be more than one manager in a particular company, for example, an appointment of joint general managers. On the other hand, the title "manager" may often be used in connection with one who is clearly in a subordinate position, for example, a sales manager or a property manager.

It may, perhaps, also be helpful to indicate some of those to whom the present discussion is not intended to apply, because of the special circumstances attending their appointment. In the first place there is the managing director, who, because of his additional authority as a director, must not be allowed to complicate the issue. Secondly, a receiver and manager, appointed either by debenture-holders or by the court, who, because of the circumstances in which he is generally appointed, commands a substantial body of law all to himself. Finally, a special manager appointed under s. 263 of the Companies Act, 1948, who is only appointed in a liquidation.

The present discussion will be limited to cases where the manager is the principal official, other than the directors, of a solvent company which is a going concern.

The manager

In *Gibson* v. *Barton* (1875), L.R. 10 Q.B. 329, Blackburn, J., referred to a manager as one who "in ordinary talk, is a person who has the management of the whole affairs of the company; not an agent who is to do one thing, or a servant who is to obey orders and do another, but a manager who is entrusted with power to manage the whole of the affairs." This description goes to the root of the whole problem: it is far easier to recognise one who is a manager than to define him or his functions. In the same case Quain, J., observed that "the word 'manager' . . . will not apply to a man who acts once or twice but he must be a delegate having control of all the affairs of the company." Again, the idea of superiority is present in the use of the word "delegate" although it is difficult to see how a manager can be other than the agent, and generally also the servant, of his company.

A more recent observation is that of Jenkins, L.J., in *Re B. Johnson & Co. (Builders), Ltd.* [1955] 1 Ch. 634. when, distinguishing between a receiver and manager appointed by debenture-holders and a manager, his lordship said (at p. 661): "But the decisive consideration, to my mind, is that the phrase 'manager of the company,' *prima facie*, according to the ordinary meaning of the words, connotes a person holding, whether *de jure* or *de facto*, a post in or with the company of a nature charging him with the duty of managing the affairs of the company for the company's benefit."

In a characteristic passage that will, no doubt, be cited many times in the future, Denning, L.J., in *H. L. Bolton (Engineering) Co., Ltd.* v. *T. J. Graham & Sons, Ltd.* [1956] 3 W.L.R. 804 puts the matter in this way (at p. 812): "[Counsel for the tenants] . . . has referred us to cases decided in the last century; but I must say that the law on this matter and the approach to it have developed very considerably since then. A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such. So you will find that in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company . . . So also in the criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the directors or the managers will render the company themselves guilty. That is shown by *R.* v. *I. C. R. Haulage, Ltd.* [1944] K.B. 551 . . . So here the intention of the company can be derived from the intention of its officers and agents. Whether their intention is the company's intention depends on the nature of the matter under consideration, the relative position of the officer or agent and the other relevant facts and circumstances of the case."

From these cases it may be deduced that the law recognises that a manager is a superior type of servant or agent with special responsibilities, depending on his relative position in the company. He is a representative of the company by which it fulfils its functions. The cases show, indeed, that managers have always been treated by the law with rather more respect than secretaries, it having been recognised that they occupy some intermediate position between the directors and the rest of the staff who are the clerks and other less important servants—the mere servants and agents who are nothing more than hands to do the work.

The Companies Act, 1948

The Companies Act, 1948, is a little uncertain as to where, exactly, lies the position of the manager. Sometimes the impression is gained that the word is used as a synonym for "director": see, for example, ss. 202 and 203 as to unlimited liability, and s. 204 as to assignment of office. Section 145 requires a company to keep minutes of meetings of directors "and where there are managers at all proceedings of meetings

of its managers", to be kept in books provided for the purpose. By way of contrast, s. 200, which requires a company to keep a register of directors and secretaries, makes no mention of managers, although the corresponding section of the Companies Act, 1929, required a register of directors and managers, but made no mention of the secretary.

Another oddity is that by s. 130 (3) (*d*) the statutory report (that *rara avis*) has to include the names, addresses and descriptions of the directors, managers (if any) and secretary, but the annual return, whilst requiring particulars of the directors and secretary, requires no information as to the managers.

Section 455 defines an "officer" as including a director, manager or secretary; s. 180 provides that the acts of a director or manager (but not apparently a secretary) shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification, and s. 188 gives power to restrain fraudulent persons in any way, whether directly or indirectly, being concerned or taking part in the management of a company.

Section 437 relates to the service of documents on a company. Subsection (2) provides: "Where a company registered in Scotland carries on business in England, the process of any court in England may be served on the company by leaving it at or sending it by post to the principal place of business of the company in England, addressed to the manager or other head officer in England of the company." This is possibly a unique example of the word "manager" being used in the Act more in the sense of representative or principal servant or agent rather than in the sense of director.

Table A

Table A in the First Schedule to the Companies Act, 1948, is uninformative on the subject of managers. In fact there is, apparently, no direct reference to a manager, as such, in the whole of Table A. On the contrary, art. 80 opens with the words "The business of the company shall be managed by the directors . . ." However, art. 86 envisages the appointment of officers, because these appointments are to be minuted, and, as by art. 1 the word "officer" is to have the same meaning as in the Act, it includes a manager. Article 136 gives an indemnity to directors, managing directors, agents, auditors, secretaries and other officers for the time being of the company; again, apparently, leaving managers to be included in the generalisation "other officers."

There is nothing in Table A to confer managerial functions on any person other than a director. As already mentioned, art. 80 wholly reserves these to the directors, the only authorities to delegate being either to a managing director under art. 109, or to a committee of one or more of themselves under art. 102.

It therefore seems that, apart from any special articles in an individual company, much must depend upon the modern approach to the problem in commercial practice.

Commercial practice

A company is liable to a third party induced to enter into a contract with a representative of the company whom the company has allowed to hold himself out as its agent with authority to act on its behalf. The representative has ostensible or apparent authority to contract on behalf of the company. Whether or not there was ostensible authority for the act for which it is sought to make the company liable is a question of fact in each case. It will depend on the nature of the matter under consideration, the relative position of the representative, and the other facts and circumstances of the case. Questions of implied authority arise where there is in fact actual authority and it is sought to determine the limits of such actual authority.

In *Re City Equitable Fire Insurance Co.* [1925] Ch. 407 it was decided that the distribution of work in a company was a business matter to be decided on normal principles of commercial practice. In that case it was held that in ascertaining the duties of a director it was necessary to consider the nature of the company's business and any reasonable distribution thereof, consistent with the articles, between directors and management. It was suggested that the larger the business the more numerous and more important become the matters which must necessarily be left to the managers and other members of the staff.

It is doubtful whether the size of the company has really any major bearing on the importance of the matters to be regarded as within the competence of a manager. If the company is a large one certainly the number of such matters will also, of necessity, be large and also, in many cases, the individual transactions will be substantial. Size is certainly one relevant circumstance to be considered but, it is submitted, it is by no means the dominant circumstance; much more important seem the nature of the company's business and the general course of conduct of the company's affairs. There may also be a possible distinction between matters of policy and matters of administration, although the difficulties of trying to make any such distinction are recognised.

Generally speaking, it is considered that modern commercial practice accords a very high degree of authority and responsibility to a manager. A manager represents his company. He is one of the agents or representatives by which the company fulfils its purpose. Just as commercial practice is not static so, as Denning, L.J., recognised in the *Bolton* case, the law on the matter of a company's representatives and the approach to it have developed very considerably since the last century.

The burden of proof

Although the burden of proof of ostensible or apparent authority will be on the party asserting it, it is submitted that, in the case of a manager, this burden would be easier to discharge as regards major actions than in the case of a subordinate official. Having appointed a person to the post of manager and having allowed him to act as such, a company would not be permitted to set up private limitations on the manager's ostensible authority. Although the limits of delegation can to some extent be indicated by a titular qualification, for example, export manager, such qualification at once takes the individual concerned outside the scope of the present discussion. The title manager, or general manager, usually applied to the individual under discussion in this article, implies, it is submitted, a very wide degree of delegation of authority.

The position under the company's memorandum and articles must not be overlooked. A manager cannot bind a company to an act which is *ultra vires* the memorandum. An *ultra vires* agreement cannot become *intra vires* by reason of estoppel, lapse of time, ratification, acquiescence, or delay (*Re Jon Beauforte (London), Ltd.* [1953] 1 All E.R. 634). Similarly, any delegated authority must be consistent with and not beyond the articles of association, although in the case of the articles, once the possibility of delegation is established, the manager may, so far as third parties are concerned, generally be assumed to be acting within the scope of his authority.

H. N. B.

" PLAYERS PLEASE ": PROJECTIONS AND LESSEES

THE maxim *cujus est solum ejus est usque ad coelum et ad inferos* is so old that it is hard to believe it could be directly in point in a modern case. Yet it was applied in *Truckell* v. *Stock* [1957] 1 W.L.R. 161 ; *ante*, p. 108 (discussed by this writer at p. 140, *ante*), and again in *Kelsen* v. *Imperial Tobacco Co. (of Great Britain and Ireland), Ltd.* [1957] 2 W.L.R. 1007 ; *ante*, p. 446, heard by McNair, J., on 1st May. In the latter case the plaintiff was the lessee of a lock-up shop, and on the upper flank wall of the adjoining premises there was a " Players Please " sign which projected into the air space above the shop. The sign was first erected in 1946. In 1950 it was replaced by another sign of a different type and projecting further. In 1946 the advertisers negotiated with the owner of the adjoining premises, and the latter confirmed with the freeholders of the lock-up shop that they had no objection to the erection of the sign. The same procedure was followed in 1950 when the sign was replaced, the freeholders of the lock-up shop again stating that they had no objection to the sign in a letter written to the freeholders of the neighbouring premises. In 1948 the plaintiff was granted a lease of the lock-up shop, in which, it was held, there was no exception as to the then-existing sign, nor was there anything to dispel the presumption, founded on the maxim quoted, that the air space above was included.

More recently, the plaintiff was approached by advertisers with a view to erecting a " Senior Service " sign on the front of his shop. He agreed to this, but first he offered the site to the defendants. They refused it, but when the " Senior Service " sign was erected they stopped the bonus which was paid to the plaintiff. The plaintiff, therefore, asked the court for an order that the " Players Please " sign be removed as it constituted a trespass. The first and most important point taken by the defendants was that the plaintiff had no right to the air space above the shop. The court held that *prima facie* the lease of land included the lease of the air space above it and the same principle would apply in the case of a single-storey shop. As stated, there was nothing in the lease to displace this *prima facie* conclusion. This links up with *Truckell* v. *Stock*. The boundary is the line at ground level. Where that boundary line is must be ascertained from the lease or conveyance and other circumstances, but once it has been found it applies vertically and any variation of it must be by way of exception. There is nothing to prevent a variation, but, express or implied, there must be something to suggest it, and in this case there was nothing, either in the lease or in the general circumstances. An authority cited by the court to support the rule is *Martyr* v. *Lawrence* (1864), 2 De G.J. & S. 261.

Nuisance or trespass ?

The defendants further suggested that the projection was a nuisance and not a trespass. The point is controversial, but the court held that this was a trespass, his lordship deriving some support from the Civil Aviation Act, 1949, which in its provisions limiting actions relating to aircraft flying over land confirmed the suggestion that an invasion of air space could be trespass. Other authorities are *Corbett* v. *Hill* (1870), L.R. 9 Eq. 671, and a more recent case, applied by the court, *Gifford* v. *Dent* [1926] W.N. 336. In fact it is hard to see how it can be otherwise. Trespass must involve direct contact, but there is nothing to suggest that it must be with a tangible object.

Estoppel

Another point taken was that the plaintiff's conduct in permitting the sign to remain since 1950 constituted an estoppel. Having regard to the peculiar circumstances the court rejected this. There was no question of the plaintiff having granted a licence. The owners of the adjoining premises had in 1950 granted a licence in consideration of £30 per annum to the advertisers. The plaintiff's freeholders had stated that they had no objection to this. The case can therefore be distinguished from *Kerrison* v. *Smith* [1897] 2 Q.B. 445, where the person seeking removal of an advertising hoarding was himself a party to the contract granting a licence for its erection. The court held that at the best the plaintiff's freeholders had indicated that they were unlikely to object to the sign. In fact the first objection had been made in 1953, but it was compromised. But in any event a licence could have been revoked, and on the authority of *Jordan* v. *Money* (1854), 5 H.L. Cas. 185, there was nothing to suggest any estoppel, equitable or legal, or that the plaintiff was in any way prevented from demanding removal of the sign.

No easement

Yet another argument was put forward by the defendants, namely, that when the plaintiff took the lease of the shop in 1948 he did so subject to all rights and easements to and in the adjacent property. But it was found that although there had been a sign in 1948, albeit a " Players Please " sign, it was not until 1950 that the present sign, differing substantially from the old one, was erected. Accordingly the court held that, when giving the permission for the erection of the new sign in 1950, the freeholders and owners of the adjoining property had no right to give an easement over the property demised. Though the freeholder retains the reversion, there is nothing out of which he can grant an interest in the land current with and offending upon the lessee's interest. But could the lessor acquire an easement against his tenant which he could then let to the advertiser ? There can be an easement to place signs upon the land of another, providing all the other requisites of an easement are there, and the dominant and servient tenements are in different hands (see *Farquhar* v. *Newbury Rural Council* [1909] 1 Ch. 12). Again, the lessee of the adjoining property could acquire an easement in respect of the sign which he could let. Further, as against the plaintiff lessee, the advertiser himself may be able to acquire an interest in respect of the sign under the Limitation Act, 1939. If the air space is to be treated as part of the land for the purposes of trespass, then it follows that it must be " land " on, or in, which a third party may " squat." The practical difficulty of establishing adverse possession in a case such as this transfers the matter almost to the realm of theory, but it is a possibility which cannot be denied.

The remedy

The final point taken by the defendants was that this was a case in which damages and not the injunction claimed were appropriate. Again the court found against them. It is a well-known principle that a defendant will not be allowed to purchase his trespass by the payment of damages, and this principle was applied here. Certainly the injury to the plaintiff's legal right was small since the sign did not harm him, nor did it diminish his enjoyment of the property, but the court has a discretion in these cases, and it would quite obviously have been wrong to award damages here.

G. W. D. P.

Landlord and Tenant Notebook

NO "DOUBLE INSURANCE"

I CONCLUDED my article in our issue of 15th June (*ante*, p. 476) with a reference to "so-called 'double insurance'." The pejorative qualification was inserted because, though there have been occasions when policies held by landlord and tenant have been treated as if they effected, or might effect, double insurance, it would not be accurate so to describe the position. Properly speaking, double insurance occurs when one person insures against the same risks with two insurers; when landlord and tenant both insure, it is necessary to see what exactly the risks are. And if some client asks "Why should I insure, when my landlord (or tenant) has insured?" the answer can, I think, best be sought in an Irish authority, *Andrews* v. *The Patriotic Assurance Co. of Ireland* (1886), 18 L.R. (Ir.) 355, more particularly so in the judgment delivered by Palles, C.B.

"The same property"

It is not necessary to set out all the facts of the case in order to see how the dispute arose. Suffice it to say that the plaintiff, a landlord, had insured against fire with the defendant company, the sum insured being £1,000 and the policy including a condition by which, if there were any other subsisting insurance "covering the same property" the defendants were to be liable for a rateable proportion only. The tenant, whose lease made him responsible for repairs, insured for £1,100. The premises were destroyed by fire; the tenant's insurers paid him £625; he was adjudicated bankrupt and did not reinstate. The question then arose whether the defendants were liable for the full amount insured by the landlord's policy.

"If at the time of any loss or damage by fire there be any other subsisting insurance or insurances, whether effected by the insured or by any other person covering the same property, this company shall not be liable to pay or contribute more than its rateable proportion of such loss or damage" was how the average clause was phrased; and Palles, C.B., dealt with the issue by asking, rhetorically, what "the same property" meant: "Is it the structure of the house? For if it be, the defence is good. Or is it the estate of the insured in the house? as, if so, the demurrer should be allowed." The learned chief baron then looked at the instrument as a whole; the contract was one to indemnify the assured from the loss, or, in other words, to pay the amount of the loss or damage to the assured's interest in the premises; the value of that interest was not affected by the act of a third party over whom he had no control.

Different risks

The plaintiff, Palles, C.B., agreed, had the benefit of the repairing covenant; but the tenant's insurers had contracted to pay to the tenant the damage he had sustained—that was, the damage to *his* estate—including his liability under his covenant to his landlord. The two risks could not be called the same.

There is, therefore, strictly speaking no "double insurance"—essentially, over-insurance—when landlord and tenant both insure "the property." In the earlier case of *North British and Mercantile Insurance Co.* v. *London, Liverpool and Globe Insurance Co.* (1876), 5 Ch. D. 569 (C.A.), this had been clearly brought out in the judgments. Grain stored in a London warehouse or granary had been insured both by the wharfingers owning the premises (who were liable to the merchants owning the grain by custom) and by the merchants; each party's policy limited liability to a rateable proportion in the event of there being any other insurance "covering the same property"; the wharfingers were paid in full, and their insurers claimed contribution from the merchants' insurers. At first instance Jessel, M.R., pointed out that "covering the same property" could not mean the actual chattel, and that the interests were not the same. In the Court of Appeal James, L.J., said: "Contribution exists where the thing is done by the same person against the same loss . . . where there is the same person insuring the same interest with more than one office"; and Baggalay, L.J., quoted with approval a statement made by Lord Mansfield, C.J., in *Godin* v. *London Assurance Co.* (1758), 1 Burr. 489: "But a double insurance is where the same man is to receive two sums instead of one, or the same sum twice over for the same loss by reason of his having made two insurances upon the same goods or the same ship."

Equitable interest?

In *Portavon Cinema Co., Ltd.* v. *Price and Century Insurance Co., Ltd.* [1939] 4 All E.R. 601, an attempt was made to establish double insurance by arguing that the particular facts raised an equity. The plaintiffs were tenants who had covenanted to insure against fire and to reinstate the premises if destroyed by fire. The landlords, anxious to obtain a loan upon the premises, found lenders who stipulated that the building should be insured against fire with a particular company, the second defendants in the action. The plaintiffs first insured with that company but then decided to change their insurers and took out a Lloyd's policy (the first defendant was one of its underwriters). They were asked to, but refused to, reconsider that decision; and the landlords, in order to comply with the lender's requirements, insured the premises with the second defendants. A fire occurred, and the first defendant pleaded the double insurance clause: ". . . does not cover any loss . . . which is insured by any other policy . . . except in respect of any excess, etc."

But, as Branson, J., put it: "If one looks at the language used, without putting any restriction upon the wideness of it, it may be urged that the existence of any other insurance of any other type covering the particular loss or liability, though taken out by a stranger, and without the knowledge of the assured in question, would operate to bring that clause into effect. I think it is quite clear upon the authorities, however, that that cannot be said . . ."; the learned judge observed, indeed, that counsel had not even suggested it; these clauses were aimed at double insurance where the assured has made other insurances upon the same property and the same interest and against the same risk.

What had been contended was that the taking out of the policy by the landlords had raised an equity in favour of the tenants; they had an equitable interest in that policy; result, double insurance. But Branson, J., considered that the facts fell short of what was required: the mere taking out of the policy, without any intention of giving the tenants an interest in it, would not suffice.

R. B.

Mr. MAURICE WILLIAM BAILEY, legal officer to the Corby, Northants, Development Corporation, has been appointed clerk and solicitor to Brigg Rural District Council.

HERE AND THERE

TOO MANY ESCAPES

"Stone walls do not a prison make
Nor iron bars a cage."

BUT, as someone has pointed out, they make an excellent imitation, so good an imitation that prison breaking has always shone with a special glamour of its own. It was nothing but his extraordinarily complicated escape from Newgate Gaol that turned Jack Shepard, in other respects a rather commonplace little thief, into a legend and a household word. Casanova's fantastic escape from the ducal prison in Venice would alone have assured him immortality, quite apart from his other conspicuous life-long achievement of swallowing every feminine bait within reach and slipping away before the Tender Trap could snap upon him. Doubtless the psychologists would say that this human delight in escapes is a form of escapism, but, reprehensible or not, it seemed about to be denied us by a process of devaluation; too many men were getting away; as likely as not any newspaper one happened to open would carry news of yet another prison break. Even the hunt for "Foxy" Fowler by land, sea and air, by sleuths and fox hounds, began to pall. The whole thing was beginning to look too easy and when in the end he was caught it was accidentally by amateurs in a North Country village. If men were walking out of prison as easily (so it seemed) as out of their own front doors, it must be, we said to ourselves, that the professional custodians were losing their grip, getting soft, like those absent-minded bloodhounds who, Devon's Chief Constable has just revealed, once walked right over a couple of escaped Dartmoor convicts and never noticed them. It was all part of the law of diminishing appreciation, inherent in human nature. One escape is splendid, but ten escapes are not ten times as splendid; they are just a bore, as commonplace as a row of ten stationary cars.

WORK OF ART

WE needed something to restore our faith in the practitioners of the escaper's art and, incidentally, in the warders, for they must not be mere lay figures or there is no merit in outwitting them. And just as our faith was at its lowest ebb Mr. Hinds leapt forward to restore it. "Either things do not come at all," wrote Hilaire Belloc, "or, if they come, they come not at that moment when they would have given us the fullness of delight." But here was an episode in which time, place and execution all combined to afford the judicious the fullness of delight. In the first place, Mr. Hinds is an accomplished and not a merely impulsive breaker away. "No sudden burst of undisciplined valour," as Napier said of the charge of the Fusiliers at Albuera, weakens the stability of his plans. After his original Robin Hood escape from Nottingham Gaol to Ireland he settled down unobtrusively and usefully as a decorator and contractor—"a perfect gentleman, quiet and law abiding," said the local policeman. He kept his freedom for 249 days (more than twice as long as Napoleon after his escape from Elba). When he was recaptured he presented a lively and coherent legal argument before the judi[illegible], on being restored to gaol, commenced an action against the Prison Commissioners. Thereby he obtained the *entrée* to the dedicated Temple of Justice in the Strand. It was as if a condemned heretic in the Middle Ages had deliberately chosen St. Peter's or the Papal Palace as a starting point for a dash from clerical custody. But anyone who knows the Law Courts, even superficially, must recognise that no place could have been better chosen. Its many corridors, sudden unexpected angles, and concealed staircases seem specially designed for a game of hide-and-seek. All sorts and conditions of people frequent it on legitimate business. Anyone can walk in unchallenged; the only sure way of creating difficulties for yourself is to ask permission. Only the officials of the Office of Works, who live, gnome-like, somewhere in its subterranean recesses, really know the odd jobs of maintenance that are constantly going on there, relaying a patch of mosaic in the Central Hall, fixing a sticking door, tinkering with the heating or the ventilation.

THE CHOSEN MOMENT

WHY should any stray attendant challenge a workman fixing a couple of staples on a lavatory door? How unobstrusive was that little piece of preparation compared to the morning bustle in the Bear Garden, with Mr. Hinds and two escorting prison officers quietly awaiting the summons of Master Grundy's clerk. Then came the perfectly reasonable request to visit the lavatory, the duly escorted move thither, the sudden assisted break out, the door slammed on the escort and a padlock slipped into the staples and the dash through the gothic maze to the street, to a car, to Bristol, to a plane, almost to another taste of Irish freedom. It is a wonder no film producer has ever thought of the Law Courts as a setting for an escape story, but doubtless the judicial wisdom that denied the use of the building to the producers of "Brothers in Law" would return an even more resolutely absolute "No." The difficulties of the immediate pursuit are illustrated by two contrasting editions of a London evening paper. The lunch edition described Hinds as "wearing a grey suit with red and brown stripes." The final night extra said that "Hinds wearing a dark coat and striped trousers could have been mistaken for a barrister as he ran through the car park." Well, well, almost anyone could be mistaken for a barrister these days, with the things barristers get up to. I have not yet met anyone in the legal world who did not feel that, in point of ingenuity and dash, the attempt deserved to succeed. Its hero has been sucked back into prison, but he has left behind an epic.

RICHARD ROE.

DEPARTMENTAL COMMITTEE ON PROCEEDINGS BEFORE EXAMINING JUSTICES

The departmental committee on proceedings before examining justices held its first meeting on 25th June and is ready to receive evidence from bodies and individuals. The evidence should be sent in the form of a memorandum to the secretary, Mr. B. C. Cubbon, Home Office, Whitehall, London, S.W.1. The terms of reference of the committee are: "To consider whether proceedings before examining justices should continue to take place in open court and, if so, whether it is necessary or desirable that any restriction should be placed on the publication of reports of such proceedings; and to report."

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Report of The Law Society's Finance Committee

Sir,—As a young solicitor I feel that the attack on The Law Society by Mr. T. Edgar Darby, published in your edition of 22nd June, should not go unanswered.

In the few years since I first became articled, there has been a substantial increase in county court fees, and in the Annual Report is a suggested new Appendix "N" which should make a great difference to the High Court costs while reducing the inconvenience of the present taxations. We also have, after a long battle, the new Retirement Annuity Scheme, which should be of benefit to every practising solicitor.

These, I suggest, are useful and substantial items of present nourishment, and some of them have only been obtained after considerable effort by The Law Society, supported by details which must have involved very considerable work to collect.

It may be that the first four items of Mr. Darby's letter need some attention, but Sir Edwin Herbert has said, and, I think, with reason, that on the smaller conveyancing transactions the charges are about as much as the traffic will bear. With regard to item 4, the adjustment of the leasehold scale, the Council has already (in February, 1957) submitted a memorandum to the Lord Chancellor on this matter dealing with this very point, and the memorandum is set out at p. 68 of the Council's Annual Report.

With regard to para. 5 about legal aid, while we would no doubt welcome an increase in the proportion of the costs which we receive, it is possible to obtain payment on account of disbursements by applying to the area committee. If Mr. Darby is paying out too much from his office accounts he should apply for payments on account.

Having been to one of The Law Society's annual conferences I would suggest that Mr. Darby should go to the next one at Harrogate in September, where he can hurl what brickbats he likes at the Council and where he will receive an answer from those whom he is attacking.

JOHN C. W. JONES.

Camborne, Cornwall.

Legal Aid and Advice Act, 1949

Sir,—We note you have kindly published our letter to you on the Legal Aid and Advice Act, 1949. We are afraid we made one mistake; we used the words "Law Society" which, of course, is not correct; it should have been the "Legal Aid Fund."

CLULOW & RUDGE.

Brierley Hill,
Staffs.

"You Can't Take It With You"

Sir,—May I suggest to your learned correspondents that the solution to this problem may be heard on a recording by Miss Eartha Kitt on H.M.V. Pop. 309.

G. W. TAYLOR.

Scarborough.

"THE SOLICITORS' JOURNAL," 4th JULY, 1857

On the 4th July, 1857, THE SOLICITORS' JOURNAL had a note on the trial of Madeleine Smith in Edinburgh for the murder of her lover: "Whether guilty or not, the young lady is prudent enough to neglect no arts by which female charms can appeal to the susceptibilities of a jury. The reporter has always some enthusiastic remarks to bestow on her dress and demeanour. We learn one day that she is becomingly attired in silks and satins and even that she has a bonnet of the newest fashion. On another day we read of her 'airy bearing' and of the sweet smile of confidence with which she fronts inquiry, except when her love letters are read, and then she hangs down her head in becoming bashfulness. Miss Smith is on trial for her life, and it would, therefore, be wise in her to have recourse to every means of safety . . . But she has some reason to suppose that her being a lady, and a young and pretty lady, may be of service to her. There is a fashion just now of petting ladies in courts of justice. The administrators of the law have taken it into their heads to be chivalric; and if they can do a lady a good turn, they make haste to do it. This modern chivalry, like its ancient prototype, certainly gratifies its inclinations at the expense of some poor, unthought-of wretches. If a lady plaintiff is favoured, a gentleman defendant is prejudiced: but what is a stupid commonplace heir-at-law or trustee or attorney in comparison with an interesting female?" The verdict was "Not Proven."

THE SOLICITORS ACTS, 1932 TO 1941

On 13th June, 1957, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that ROBERT CLAYBORN WILSON, of 2 Cecil Square, Margate, Kent, be suspended from practice as a solicitor for a period of two years from 13th June, 1957, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 13th June, 1957, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of DENIS JOHN MAGRATH, formerly of 79 Church Road, Hove 3, Sussex, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 13th June, 1957, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of IVOR MYERS, formerly of 16 Bolton Street, London, W.1, be struck off the Roll of Solicitors of the Supreme Court, and that with another they jointly and severally do pay to the applicant his costs of and incidental to the application and inquiry.

On 13th June, 1957, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that JONAS LOUIS MYERS, of 17 Collingwood Court, Queen's Road, Hendon, and 16 Bolton Street, London, W.1, be suspended from practice as a solicitor for a period of six months from 13th June, 1957, and that with another they jointly and severally do pay to the applicant his costs of and incidental to the application and inquiry.

On 13th June, 1957, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that HERBERT JOHN PHILCOX, of 39 Sutton Park Road, Seaford, and 45 High Street, Newhaven, Sussex, be suspended from practice as a solicitor for a period of two years from 13th June, 1957, and that with another they jointly and severally do pay to the applicant his costs of and incidental to the application and inquiry.

THE SOLICITORS ACTS, 1932 TO 1956

On 13th June, 1957, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1956, that there be imposed upon ROYSTON JOHN GARRETT PHILCOX, of 39 Sutton Park Road, Seaford, and 45 High Street, Newhaven, Sussex, a penalty of fifty pounds to be forfeit to Her Majesty, and that with another they jointly and severally do pay to the complainant his costs of and incidental to the application and inquiry.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

CRIMINAL LAW: VIEW WITH WITNESSES: JUDGE ABSENT: FATAL DEFECT

Tameshwar and Another *v.* R.

Earl Jowitt, Lord Tucker and Lord Denning. 18th June, 1957

Appeal from the Court of Criminal Appeal in British Guiana.

At the end of the evidence taken in court on the trial of the appellants, Tameshwar and Seokumar, in British Guiana before Miller, Ag. J., and a jury on a charge of robbery with aggravation the judge directed a view by the jury of the scene of the robbery. It was attended, *inter alios*, by the accused, by counsel for the prosecution, and by counsel for one of the accused, and by a number of prosecution witnesses, but the judge was absent. The witnesses pointed out particular places which had been mentioned in their evidence and demonstrated what had happened. There was no suggestion of impropriety or irregularity on the part of the jury or witnesses or anybody else at the view. The appellants were found guilty of the offence charged and sentenced to ten years' penal servitude and six strokes by flogging. The flogging had not been carried out. Special leave to appeal from the judgment of the Court of Criminal Appeal in British Guiana, which had affirmed the convictions and sentences, was granted on the ground that the jury had had a view with witnesses *in the absence of the judge*.

LORD DENNING, giving the judgment, said that a view at which witnesses gave demonstrations or answered questions was part of the trial and part of the evidence in the case and must be held in the presence of the judge and the jury. The absence of the judge at such a view was a fatal defect in the trial; but this was not so in the case of a simple view by the jury without witnesses. In *Karamat* v. *R.* [1956] A.C. 256 their lordships held that a view at which witnesses gave demonstrations was part of the evidence. *R.* v. *Martin and Webb* (1872), L.R. 1 C.C.R. 378; 26 L.T. 778, could not be regarded as any warrant for a view to take place with witnesses in the absence of the judge—the point was not determined there because the facts were not properly before the court. Here the absence of the judge during part of the trial—the view—was such a departure from the essential principles of justice that the trial could not be allowed to stand, and the convictions must be quashed. The judge could only properly sum up if he had heard all the evidence and seen all the demonstrations by witnesses. Section 45 of the Criminal Law (Procedure) Ordinance, 1953, of British Guiana, enabled the court or a judge to determine "the terms and conditions" on which a view might be held, but that power must be exercised in accordance with the fundamental principles of a fair trial, one of which was that every piece of evidence given by a witness must be given in the presence of the tribunal—the judge and jury—which tried the case. [The appeal was allowed and the convictions quashed on 1st May, the reasons of the Board being given on 18th June.]

APPEARANCES: *B. Gillis*, Q.C., and *J. Lloyd-Eley* (*Druces and Attlee*); *J. G. Le Quesne* (*Charles Russell & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[3 W.L.R. 157**

Court of Appeal

PROFITS TAX: WHETHER DISTRIBUTION OF SURPLUS ASSETS IN VOLUNTARY LIQUIDATION A "GROSS RELEVANT DISTRIBUTION"

Inland Revenue Commissioners *v.* Pollock & Peel, Ltd. (in liquidation)

Lord Evershed, M.R., Morris and Pearce, L.JJ. 24th May, 1957

Appeal from Upjohn, J. ([1956] 1 W.L.R. 951; 100 SOL. J. 567).

In 1952 an engineering company, Messrs. Pollock & Peel, Ltd., of which the issued capital was £30,060, went into voluntary liquidation for the purpose of reconstruction, and its assets were transferred to a new company of the same name. After the transfer of assets to the new company and after the liquidator had paid all debts and liabilities of the company, including the costs of winding it up, and after the distribution of shares in the new company, there remained a sum of cash belonging to the company which amounted to £15,030. As a final step in the liquidation proceedings, the liquidator distributed this sum of cash to the executors of one shareholder and to the remaining shareholder, they being the only members of the company. The Crown claimed that this sum was a "gross relevant distribution" in respect of the last chargeable accounting period in which the trade or business of the company was carried on, within the meaning of s. 35 (1) of the Finance Act, 1947, having regard to the terms of s. 31 (1) of the Finance Act, 1951. Upjohn, J., decided in favour of the company and the Crown appealed.

LORD EVERSHED, M.R., said even if, though he did not so decide, s. 31 (1) of the Finance Act, 1951, was apt to cover a return of share capital taking place after a company had gone into liquidation, the payment out in this case was not a repayment or return of share capital within that section. *Inland Revenue Commissioners* v. *Blott* [1920] 2 K.B. 657 dealt with a different question and the language of Scrutton, L.J., at p. 675, on which the Crown relied, was not of assistance. Even if the sum was to be deemed to be a distribution, by virtue of s. 31 of the Act of 1951, it was not necessarily a "gross relevant distribution" for the purpose of para. (*c*) of s. 35 (1) of the Finance Act, 1947. Section 31 of the later Act only said that certain things were to be deemed distributions; it would still be necessary to show that they answered the other characteristics set out in s. 35 if they were to be "gross relevant distributions." His lordship rejected the argument that because the company had gone into liquidation all that the liquidator could distribute was assets and that this sum could not be a distribution of capital within s. 35 (1) (*c*). This distribution would in its nature, and certainly in the hands of recipients, have been capital rather than revenue. It was a distribution of capital which did not exceed the limit imposed by the last six lines of s. 35 of the Act of 1947, i.e., it did not exceed the nominal amount of the paid-up share capital, and was excluded from the "gross relevant distributions" under para. (*c*).

MORRIS and PEARCE, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Sir Reginald Manningham-Buller*, Q.C., A.-G., *Sir Reginald Hills* and *E. Blanshard Stamp* (*Solicitor of Inland Revenue*); *Roy Borneman*, Q.C., and *Hilary Magnus*, Q.C. (*Frank Simmonds, Parker & Hammond*, for *Percy Holt & Nowers*, Croydon).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[1 W.L.R. 822**

BANKRUPTCY: NOTICE: "CROSS-DEMAND": CLAIM UNDER MARRIED WOMEN'S PROPERTY ACT, 1882, SECTION 17

***In re* A Debtor (No. 80 of 1957)**

Jenkins and Sellers, L.JJ., Roxburgh, J. 29th May, 1957

Appeal from Mr. Registrar Bowyer.

In proceedings brought under s. 17 of the Married Women's Property Act, 1882, and pending in the Divorce Division, a debtor claimed against his wife the whole of the contents of the matrimonial home and certain jewellery which he estimated to be worth in the aggregate £20,000. The wife resisted the debtor's claim and estimated the value of the chattels at £6,000. Subsequent to the institution of these proceedings the wife obtained judgment against the debtor in other proceedings for £636 15s. 4d. in respect of which she issued a bankruptcy notice. On an application by the debtor under s. 1 (1) (*g*) of the Bankruptcy Act, 1914, to have the bankruptcy notice set aside on the grounds that he had a "counter-claim, set-off or cross-demand" which equalled or exceeded the amount of the judgment debt, the registrar dismissed the application. The debtor appealed.

SELLERS, L.J., said that the debtor, the husband, could only succeed in setting aside the bankruptcy notice served on him in accordance with s. 1 (1) (*g*) of the Bankruptcy Act, 1914, if he could fulfil one of the requirements of the subsection. He had

sought to satisfy the court that he had a cross-demand which equalled or exceeded the amount of the judgment debt. He failed to satisfy the registrar, not because of what might be called the merits of the claim, but because the facts and circumstances arising here did not, in the registrar's view, establish a cross-demand. He (his lordship) felt that the words permitted of a wider interpretation and would include the husband's claim in the present case. The only cross-demand which the husband had and sought to set up was a claim under s. 17 of the Married Women's Property Act, 1882. The proceedings by summons seemed to him (his lordship) to be a demand by the husband for what he alleged to be his own property, and if he set it up, as he did here, against the judgment it became a cross-demand. Unless he was making a demand, he (his lordship) did not follow the purpose of the proceedings. It was necessary to see whether the husband had shown, sufficiently to satisfy the court, that he had a cross-demand which equalled or exceeded the amount of the judgment debt. For this purpose it should appear probable that he would establish a claim against the wife personally for an amount in value for at least the amount of the judgment. The judgment debt was £636 15s. 4d. and, having regard to the goods involved and the respective values alleged and such evidence as there was before the court, he (his lordship) would hold that the court should be satisfied that the husband had a cross-demand which equalled or exceeded the amount of the judgment debt. He would allow the appeal and set aside the bankruptcy notice.

ROXBURGH, J., agreeing that the appeal should be allowed, said that for the purposes of satisfying the subsection not every demand would suffice. The debtor must satisfy the court that he had a genuine demand, and further, that it had a reasonable probability of success.

JENKINS, L.J., dissenting, said that to his mind, whether the debtor won or lost the proceedings under s. 17, the debtor had no cross-demand in respect of the chattels in respect of which the bankruptcy notice could properly be set aside. He would dismiss the appeal. Appeal allowed.

APPEARANCES: *A. C. Sparrow* (*Kenneth Brown, Baker, Baker*); *W. A. Bagnall* (*Lewis & Lewis and Gisborne & Co.*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law.] **[3 W.L.R. 184**

PROFITS TAX: COMPANY: "CONTROLLING INTEREST": WHETHER REGISTER OF MEMBERS SOLE TEST

S. Berendsen, Ltd. *v.* Inland Revenue Commissioners

Lord Evershed, M.R., Morris and Pearce, L.JJ. 30th May, 1957

Appeal from Wynn Parry, J. ([1957] 2 W.L.R. 447; *ante*, p. 229).

A company had an issued share capital of 1,000 shares, each of which carried one vote at meetings of the company. The directors of the company between them held 401 of the shares, carrying less than 50 per cent. of the votes at meetings, and a Danish company held 590 shares, carrying over 50 per cent. of the votes. The shareholding of one of the company's directors in the Danish company gave him control of the voting power of the Danish company. On an assessment to profits tax, it was contended by the Crown that the shares of the Danish company should be added to the shares held by the directors for the purpose of ascertaining whether a controlling interest in the company was held by the directors within the meaning of para. 11 of Sched. IV to the Finance Act, 1937, as amended by s. 34 of the Finance Act, 1952. The Special Commissioners accepted this contention, but on appeal Wynn Parry, J., held that the share register of the company was the sole test in deciding the ownership of shares, and it was not permissible to go beyond the register to ascertain whether the directors in fact owned any further shares, and he reversed the decision of the commissioners. The Crown appealed. *Cur. adv. vult.*

LORD EVERSHED, M.R., said that, where a registered shareholder was a body corporate, it was necessary to look beyond the share register to ascertain who by their votes controlled that body corporate and that, in the present case, since the Danish company, the majority shareholder in the English company, was itself controlled by one of the directors of the English company, the directors of the English company had a "controlling interest therein" within para. 11 of Sched. IV to the Finance Act, 1937, as amended by s. 34 of the Finance Act, 1952. The court ought to follow the reasoning of Scott, L.J., in *F. A. Clark & Son, Ltd.* v. *Inland Revenue Commissioners* [1941] 2 K.B. 270. Wynn Parry, J., came to the conclusion in the present case that there was a conflict between the basis of the decision in *Clark's* case, *supra*, and *Inland Revenue Commissioners* v. *Silverts, Ltd.* [1951] Ch. 521, and that it was his duty to follow *Silvert's* case. Had the judge appreciated that the Court of Appeal had misstated in a material respect in *Silvert's* case the facts in *Clark's* case, and therefore really had not properly stated the *ratio* of Scott, L.J.'s decision, he might very likely have come to a different conclusion in the present case. The appeal would be allowed.

MORRIS and PEARCE, L.JJ., delivered concurring judgments. Appeal allowed. Leave to appeal to the House of Lords granted.

APPEARANCES: *R. O. Wilberforce*, Q.C., Sir *Reginald Hills* and *E. B. Stamp* (*Solicitor of Inland Revenue*); *F. N. Bucher*, Q.C., and *R. Buchanan-Dunlop* (*Denton, Hall & Burgin*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] **[3 W.L.R. 164**

ESTATE DUTY: DISCLAIMER OF SPECIFIC LEGACIES WITHIN FIVE YEARS OF DEATH OF DISCLAIMANT

In re Stratton's Disclaimer; Stratton and Others *v.* Inland Revenue Commissioners

Jenkins and Sellers, L.JJ., Roxburgh, J. 6th June, 1957

Appeal from Danckwerts, J. ([1957] Ch. 132; 100 SOL. J. 928).

The widow of a testator disclaimed all interest in certain policies of insurance and freehold properties to which she was entitled under the will of her husband, and that property, in consequence, went to her three sons, the residuary legatees. She died within five years of making the disclaimer. The Crown claimed that estate duty was payable on her death by virtue of s. 45 (2) of the Finance Act, 1940, in that the disclaimer was "the extinguishment at the expense of the deceased of a debt or other right . . . in favour of the person for whose benefit the debt or right was extinguished . . ." within the meaning of those words in the subsection. Danckwerts, J., accepted the Crown's contention. The widow's executors appealed. *Cur. adv. vult.*

JENKINS, L.J., said that the application of s. 45 (2) of the 1940 Act to the transaction now in question demanded an affirmative answer to each of the following questions: (1) Did the widow have a "right" in respect of the policies and freehold property bequeathed and devised to her during the period between the death of the testator and the execution of the deed of disclaimer?; (2) if so, did the disclaimer bring about an "extinguishment" of that right?; (3) if so, was such extinguishment effected "at the expense" of the widow?; (4) if so, was the right extinguished "for" the "benefit" of the three sons? In his (his lordship's) judgment an affirmative answer should be given to all these questions. As to the first question, in his view the widow plainly had a right within the meaning of the subsection in respect of the specific bequest and devise pending disclaimer. As to the second question, it seemed to him that a disclaimer such as this was a typical example of the extinguishment of a right. As to the third question, the extinguishment of the right was at the expense of the deceased in that she thereby lost the benefit of the specific bequest and devise. As to the fourth and final question, it was to his mind self-evident that the extinguishment of the widow's right in respect of the specific bequest and devise was for the benefit of the three sons. As to the answer to this question, he (his lordship) differed from Danckwerts, J., in finding it impossible to hold that s. 45 (2) in referring to "the person for whose benefit the debt or right was extinguished" meant any more than the person for whose benefit the extinguishment of the debt or right operated. In his (his lordship's) view, it was not necessary to show that in bringing about or suffering the extinguishment the deceased was actuated by the intention, purpose or desire of benefiting that person. The appeal would be dismissed.

SELLERS, L.J., and ROXBURGH, J., delivered concurring judgments. Appeal dismissed. Leave to appeal to the House of Lords granted.

APPEARANCES: *Charles Russell*, Q.C., and *A. J. Belsham* (*Mackrell, Maton & Co.*); *J. Pennycuick*, Q.C., and *E. B. Stamp* (*Solicitor of Inland Revenue*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] **[3 W.L.R. 199**

CONFLICT OF LAWS: VALIDITY OF MARRIAGE: MARRIAGE BETWEEN POLES IN ITALY

Taczanowska (otherwise Roth) *v.* Taczanowski

Hodson, Parker and Ormerod, L.JJ. 6th June, 1957

Appeal from Karminski, J. ([1956] 3 W.L.R. 935; 100 SOL. J. 875).

A ceremony of marriage was performed between Polish nationals in Italy in 1946 by a Polish army chaplain according to the rites of the Roman Catholic Church. The husband was a member of the Polish forces. The relevant articles of the Italian civil code were not read over to the parties by the officiating priest, nor was the ceremony registered in the Italian civil register of marriage as required by Italian law. The requirements of the *lex loci* were accordingly not complied with. It was, however, accepted that the Italian law would recognise the validity of the marriage if it was valid by the national law of the parties at the time of the ceremony. By the Polish law of 25th November, 1926, Polish army chaplains were given power to solemnise legal and valid marriages of military persons; but that power was abrogated by the Lublin Government (which was recognised by His Majesty's Government in July, 1945); and by a decree of September, 1945, it was provided that the only valid form of marriage to be recognised by Polish law as from 1st January, 1946, was one before a civil registrar. Karminski, J., pronounced a decree of nullity of marriage, holding that the *lex loci celebrationis* applied and that neither Italian nor Polish law had been complied with. The husband now appealed.

HODSON, L.J., said that the fact that the Polish 2nd Corps, of which the husband was a member, was under the operational command of the Allied 8th Army was too remote to justify the court in holding that this ceremony was valid under s. 22 of the Foreign Marriage Act, 1947, even though that Corps had by the time of the ceremony been disowned by the Polish Government. The relevant authority in this matter was the chaplain who officiated at the ceremony in Italy, and nothing in the Polish Resettlement Act, 1947, enabled the court to say that by English law this ceremony should be held to be valid. There remained the argument put forward by the Queen's Proctor, and supported by counsel for the appellant husband, that the ceremony was valid at common law, and the requirements of the *lex loci* as to form did not apply. At the material date the Polish land forces in Italy were forces in belligerent occupation of Italian territory and therefore, it was said, exempt from the requirements of the *lex loci*. The principle that parties, by entering into a marriage contract in a foreign country, subjected themselves to have the validity of it determined by the laws of that country did not apply in the case of a contract performed in an occupied country by a member of the occupying forces. This case was not complicated by any terms of capitulation and there was no evidence that in 1946 the Allied Forces in Italy were in any way subject to the laws of that country. There was no reason, therefore, why the validity of the ceremony in form should be governed by the *lex loci*. If it was said that since the parties were not British subjects, the common law of England did not apply to them, the answer was that such was the law *prima facie* to be administered in the courts of this country. There was no question here of personal incapacity to marry or any other consideration apart from form for which one would look to the law of the domicile, and there would be a grave difficulty in applying the law of the domicile or nationality, amounting to an impossibility in some cases, where a marriage had been celebrated between persons of different nations or different domiciles. The ceremony of marriage here fulfilled all the essentials of a common-law marriage, and should be recognised as such notwithstanding the foreign nationality and domicile of the parties at the date of the ceremony.

PARKER, L.J., agreeing, said that it was a well-established principle of English law that the formal validity of a marriage depends on the *lex loci celebrationis*, but this was not an absolute rule. The court should not, in such a case as this, look to the *lex loci*, nor to the law of the domicile of the spouses at the time of the marriage. No doubt, English law would look at the law of domicile to determine capacity, but for no other purpose. There was no authority or reason requiring the court to look at any other law, once the *lex loci* was inapplicable.

ORMEROD, L.J., delivered a concurring judgment. Appeal allowed.

APPEARANCES: *Harold Brown*, Q.C., and *N. H. Curtis-Raleigh* (*Lawrence & Co.*); *Roger Ormrod* (*Queen's Proctor*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[3 W.L.R. 141**

Chancery Division

MORTGAGE: ORDER FOR POSSESSION: FURNITURE LEFT ON PREMISES

Norwich Union Life Insurance Society *v.* Preston

Wynn Parry, J. 30th April, 1957

Procedure summons.

This was an application by an insurance society as mortgagee for an order directing the mortgagor to remove his furniture, motor car and effects from the mortgaged premises. Since July, 1955, he had not made any payments under the mortgage and the mortgagee proceeded against him under R.S.C., Ord. 55, r. 5A, for possession. On 10th July, 1956, an order in the usual form was made directing him to give up possession within twenty-eight days. On his non-compliance a writ of possession was issued and eviction followed, but the mortgagor would not remove his furniture, motor car and effects from the premises.

WYNN PARRY, J., said that although the language of R.S.C., Ord. 55, r. 5A, directed the mortgagor to deliver up, not "vacant possession" of the premises, but simply "possession" of them, it was essential to have regard to the common sense of the matter. Without vacant possession the mortgagee could not hope to deal with the premises in a manner enabling it to recoup itself for what the mortgagor owed to it. Theoretically it might take the furniture, car and effects out of the premises. Such a policy, however, was not practicable in these days. In *Cumberland Consolidated Holdings, Ltd.* v. *Ireland* [1946] K.B. 264, 270, Lord Greene, M.R., said: "Subject to the rule *de minimis* a vendor who leaves property of his own on the premises on completion cannot, in our opinion, be said to give vacant possession, since by doing so he is claiming a right to use the premises for his own purposes, namely, as a place for the deposit of his own goods inconsistent with the right which the purchaser has on completion to undisturbed enjoyment." That principle ought to be applied in the present case. Accordingly the application succeeded. Order accordingly.

APPEARANCES: *S. W. Templeman* (*Collissons & Dawes*, for *T. F. Barton*, Norwich); the mortgagor appeared in person.

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 813**

TRUSTEE: POWER OF ADMINISTRATORS WITH WILL ANNEXED TO APPOINT NEW TRUSTEES

***In re* Cockburn's Will Trusts; Cockburn *v.* Lewis**

Danckwerts, J. 4th June, 1957

Adjourned summons.

Three persons were appointed executors and trustees of a will, of whom two predeceased the testator and the third renounced probate. Two administrators with the will annexed were appointed and carried out their duties for ten years. A summons was taken out to determine whether the administrators, who had cleared the estate and completed the administration in the ordinary way, were trustees for the purposes of the will and at liberty to exercise the powers and discretions thereby conferred on the trustees for the time being of the will.

DANCKWERTS, J., said that whether persons were executors or administrators, once they had completed the administration in due course, they became trustees holding for the beneficiaries either on an intestacy or under the terms of the will, and were bound to carry out the duties of trustees, though in the case of personal representatives they could not be compelled to go on indefinitely acting as trustees, and were entitled to appoint new trustees in their place and thus clear themselves from those duties which were not expressly conferred on them under the terms of the testator's will and which, for that purpose, they were not bound to accept. If they did not appoint the new trustees to proceed to execute the trusts of the will, they would become trustees in the full sense. Further they had the power, under the trusts conferred by s. 36 of the Trustee Act, 1925, to appoint trustees of the will to act in their place. Declaration accordingly.

APPEARANCES: *E. I. Goulding* (*Fladgate & Co.*); *V. G. H. Hallett, G. M. Parbury* and *J. L. Arnold* (*Frere, Cholmeley & Nicholsons*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[3 W.L.R. 212**

Probate, Divorce and Admiralty Division

ADMIRALTY JURISDICTION: PROVISION IN BILL OF LADING TO REFER DISPUTES TO FOREIGN TRIBUNAL

The *Fehmarn*

Willmer, J. 7th June, 1957

Motion.

The plaintiffs, an English company and the holders of a bill of lading which acknowledged the shipment at a Russian port, in apparent good order and condition, of a cargo of turpentine by a Russian organisation for carriage to London, started an action against the defendants, the owners of a German vessel in which the turpentine was carried, for damages arising out of a dispute under the bill of lading, it being alleged that, on delivery in London, the turpentine was discovered to be contaminated. It was a term of the bill of lading that all claims and disputes arising thereunder "shall be judged in the U.S.S.R." After discharge, the turpentine and the vessel were surveyed in the United Kingdom, and all the plaintiffs' witnesses as to their title to sue were in the United Kingdom. The German vessel traded regularly to the United Kingdom. Counsel for the defendants intimated in argument that the defendants might wish to call evidence at the trial as to the condition of the railway wagons from which the turpentine had been loaded. The defendants moved for an order that the writ of summons be set aside for want of jurisdiction, or, alternatively, that the action be stayed.

WILLMER, J., said that the defendants' contention that there was no jurisdiction was quite unarguable having regard particularly to the terms of s. 1 (1) (*g*) of the Administration of Justice Act, 1956. He was fortified in arriving at that conclusion by the decisions in the *Cap Blanco* [1913] P. 130, where a similar point was taken, and in the *Athenee* (1922), 11 Ll. L. Rep. 6, which was decided in the Court of Appeal. In those circumstances he could not in any case set aside the writ. The question, however, arose whether in his discretion he ought to stay the proceedings on the ground that the parties had, by agreement, selected a foreign tribunal. It was well established that, where there was a provision in a contract providing that disputes were to be referred to a foreign tribunal, then, *prima facie*, the court would stay proceedings instituted in this country in breach of such agreement, and would only allow them to proceed when satisfied that it was just and proper to do so. This was a case of cargo loaded at a Russian port by a Russian shipper on board a German ship which was a frequent trader to this country. The cargo was ultimately bought by the present plaintiffs who were domiciled in this country. The claim arose in this country. This was where the damage sued for was discovered. It was in this country that the cargo was surveyed and the damage ascertained. Virtually all the evidence which would have to be called on behalf of the plaintiffs was to be found in this country. The only matter of evidence, so far as the plaintiffs' case was concerned, which did not arise in this country was with regard to the condition of the cargo on shipment at the Russian port. With regard to that the plaintiffs were, in the first instance at any rate, entitled to rely on the representation in the bill of lading that it was shipped in apparent good order and condition. In those circumstances it was argued by the plaintiffs that far and away the most convenient place to try this dispute would be in this country. Moreover, it was contended that that would be no hardship to the defendants, who were Germans, and, therefore, were equally foreigners in Russia or in this country. Even assuming that equal facilities for trying the case existed in Russia as existed in this country, and that the parties would get just as fair a trial in Russia as they would get here, the plaintiffs had shown grounds sufficient to entitle them to take advantage of the undoubted jurisdiction of this court. Accordingly, his lordship declined to stay the proceedings. Judgment for the plaintiffs. Leave to appeal to the Court of Appeal.

APPEARANCES: *Derek H. Hene* (*Bentleys, Stokes & Lowless*); *H. V. Brandon* (*Clyde & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 815**

Southwark Consistory Court

ECCLESIASTICAL LAW: COSTS ORDERED AGAINST STONEMASON FOR TOMBSTONE ERECTED WITHOUT FACULTY

In re Woldingham Churchyard

Garth Moore, Ch. 11th April, 1957

Petition for a confirmatory faculty.

A tombstone, consisting of a cross on a boulder, surrounded by a curb filled with granite chips, was erected in Woldingham Churchyard and a confirmatory faculty was afterwards sought by the stonemasons and their customer. The stonemasons who had carried out the work had given an oral undertaking to the customer that they would obtain any necessary permission, but failed to do so, and erected the tombstone without having obtained either a faculty or the permission of the incumbent. The petitions were consolidated, and were opposed by the incumbent of the parish and the Archdeacon of Kingston, both of whom appeared in person. The stonemasons appeared by their manager and the customer appeared by his solicitor.

GARTH MOORE, Ch., said that he was prepared in the present case, though only out of consideration for the family of the deceased, to grant a confirmatory faculty in respect of the cross on the boulder only; the curbs and chips must be removed and their removal was a condition precedent to the grant of a faculty in respect of the cross and boulder. Further, the expense of removal of the curbs and chips must be borne by the stonemasons, and they must be removed within a month. If within the month the curbs and chips were still in position, then the order would lie to the customer, who would have a further month in which to remove them so as to satisfy the condition on which the cross and boulder might remain, and any expense incurred by him would be paid by the stonemasons. If they were not removed within this period, then the order would go to the incumbent for a further month, and likewise his expenses would be paid by the stonemasons. Lastly, if the curbs and chips were still in position after three months, then the order would lie to the archdeacon to remove them, and the expenses incurred by him would be paid by the stonemasons. The stonemasons would also pay the costs of all parties to the suit.

APPEARANCES: *Walker, Smith & Way*, Chester.

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 811**

Sir DAVID ARNOLD SCOTT CAIRNS, Q.C., has been appointed a Commissioner of Assize on the Midland Circuit.

Mr. JAMES HAWORTH, assistant solicitor to Carlisle Corporation, has been appointed assistant and prosecuting solicitor to Blackpool Corporation.

Mr. THOMAS BARNSLEY SIMPSON, solicitor, of Leeds, has been appointed to the board of the Halifax Building Society.

The terms of office of Mr. R. E. A. ELWES, Q.C., as chairman of Derbyshire Quarter Sessions and Mr. H. G. TALBOT as deputy chairman have been extended for a further period of five years.

Mr. Alan Leonard James, solicitor, of Swansea, was married on 18th May to Miss Barbara Lloyd, of Llanelly.

Mr. Henry Soden-Bird, solicitor, of West Hartlepool, was married on 20th June to Miss Mary Ann Duffy, of West Hartlepool.

Mr. John David Mason, solicitor, of Cardiff, was married recently at Cardiff to Miss Shirley Elissa Williams.

The Board of Inland Revenue announce that the Stamp Office in Bush House, Strand, London, W.C.2, will be closed on Saturdays from 3rd August, 1957, inclusive.

LEGAL AID: EMPLOYMENT OF COUNSEL

THE following circular issued by the Senior Registrar of the Divorce Registry forms part of the agreed statement, referred to in a "Current Topic" at p. 488, *ante*, as to the future policy of the taxing authorities.

Registrar's Circular
24th June, 1957

The Registrars of the Divorce Registry have at the request of the professional bodies issued the following statement of their policy as regards Counsel's fees on taxations under the Third Schedule to the Legal Aid and Advice Act, 1949. They wish to make it clear that while this statement represents their general policy, it cannot fetter the discretion of the individual officer of the court taxing any particular bill.

1. *Settling Documents*

(*a*) *Pleadings.*—A fee will always be allowed, unless the document is a plain denial or joinder of issue and a conference or advice has already been allowed on it.

(*b*) *Discretion Statement.*—A fee will be allowed, unless the facts are so simple that it is little more than a verbatim extract from the proof.

(*c*) *Application for Particulars.*—A fee will be allowed, except when confined to a request for particulars of the "general charge" or other short and simple request.

(*d*) *Affidavits.*—A fee will usually be allowed if the affidavit is more than a simple statement of facts, though less readily in undefended applications. Under Ord. 65, r. 27, reg. 15, one suitable fee only will be allowed for a group of affidavits.

(*e*) *Summonses.*—No fee will be allowed unless the summons is of a technical or complicated character.

2. *Opinion and Advice*

A clear distinction is drawn between a preliminary opinion and advice on evidence.

A preliminary opinion before, or with, the settling of the petition will be allowed only if the case has features of special difficulty; for instance, if the party has disclosed details which suggest further enquiries might be necessary to support an alternative charge; or if questions of domicile or jurisdiction arise. An opinion specially required by an area or local committee will always be allowed. One appropriate fee only will be allowed for such an opinion, whether given in writing or in conference.

One fee for advice on evidence will always be allowed if it is taken after the close of pleadings, but not if taken earlier. Any further advice must be justified on the facts.

3. *Conference*

A fee will always be allowed on a main brief, but not on a brief for a summons or interlocutory proceeding which is of a very simple character or in which Counsel has already advised or settled the papers. Conferences other than on a brief must be justified on the facts. A fee will seldom be allowed for a conference held before appearance.

4. *Brief fees on summonses and other interlocutory proceedings*

(*a*) A certificate for Counsel will not be given on either side where the application is a simple procedural one which does not justify his attendance. Examples of applications on which a certificate will be given only in exceptional circumstances are—

All unopposed applications (i.e., by consent, or agreed "no cause to show," or not requiring service), whether included in the list below or not:—

Leave to amend pleading.
Discovery.
Appointment of medical inspectors.
Further time or leave to file out of time.
To stay prayer and proceed on answer.
Particulars, if confined to the "general charge" or other very simple request.
Security for costs.
Removal of solicitor's name from record.
Variation of venue.
Removal of stay of proceedings.
Appointment of guardian.
Garnishee or charging order.

(*b*) A certificate will be given on opposed applications for ancillary relief where the circumstances and the complexity of the parties' affairs are such that the attendance of Counsel is likely to be of assistance to the Registrar.

(*c*) Ordinary consent orders for alimony, maintenance, etc., are not regarded as requiring the attendance of Counsel. If, however, a deed of settlement or a secured provision is the subject of a compromise affecting the interests of an infant, this may be regarded as an exceptional circumstance justifying the attendance of Counsel even on a consent application.

B. LONG,
Senior Registrar.

BAILIFFS

The following extracts from the Report of the Working Party on Service and Execution in the County Court are those referred to in the paragraph headed "Bailiffs" on p. 521, *ante*:—

"*The efficiency of the system of execution against goods*

57. The most severe criticism is made against the procedure after the warrant has been handed to the bailiff. The Law Society originally alleged (see Appendix A) that the 'bailiff service is slow, indifferent, unreliable and non-productive,' that creditors issue executions 'more in hope than expectation,' that in the majority of cases execution is non-effective and that bailiffs frequently take no action in the first month after the warrant is issued. These allegations were strenuously denied by Registrars and their staffs, who regarded them as quite unjustified. After we had met representatives of The Law Society and supplied them with the relevant statistics the Society substantially qualified their previous strictures and indicated that those were only intended to apply to warrants over £5, and particularly those over £20 (see letter dated 16th July, 1956, in Appendix A).

58. As a result of a letter inviting criticisms and suggestions sent by our Chairman to 358 solicitors (whose names were given to us by Registrars as having the largest practices in their courts), and of notices in the Law Society's Gazette and the Law Journal, we received letters from 119 solicitors. Of these 31 were strong critics of execution in the county court and particularly of the judgment summons procedure; 64 made minor criticisms or suggestions, and 24 expressed general satisfaction or made no criticism; 252 of the solicitors written to did not reply.

59. In addition to the representatives of The Law Society we saw other solicitors who supported the Society's allegations. We have no doubt that their criticisms are based on their experience, but this experience often was limited to the larger type of case and to the particular court in which they usually practice.

A number of solicitors gave us details of particular cases where they considered there had been inefficient work by a county court. But in hardly any of these cases had any complaint been made to the Registrar concerned and, owing to the lapse of time, inquiry now was difficult, if not useless. In some cases we found there was a perfectly good explanation of the action, or lack of action, of the court concerned and had the solicitor made a complaint he would have found out it was unjustified. Most Registrars told us they rarely received complaints, and both The Law Society representatives and other solicitors we saw agreed that direct complaints were rare and that their absence was due to the desire of solicitors

generally to keep on good terms with the Registrar and his staff. Strong criticism made later, without complaint to the Registrar at the time, makes us believe that inefficiency has been assumed in many cases when full enquiry would have shown that it did not exist. In fairness to these critics, however, we would stress that the frequent failure by courts to give solicitors full information as to the progress of executions is one of the main reasons for misunderstanding, and is, in itself, a justifiable complaint against the system.

60. The views of the Association of Trade Protection Agents differed from those of The Law Society. Their deputation to us made no complaint of the system of execution against goods which they stated was satisfactory to them, and their only suggestion regarding this system was that 'execution for part' should be allowed in all courts and not only in some. This method was extensively used by them and they claimed that it was most effective, even when the debt was substantial. Their views are entitled to considerable weight as we found that in many of the industrial and mining areas agents were employed in up to 75 per cent. of all the cases in courts in those areas. Their claim that they get good results was borne out by many Registrars.

61. The figures we obtained do not support The Law Society's allegations. As an instance of inefficiency the Society rely on the large number of warrants compared with the small number of sales, but we find this argument unconvincing. An efficient system would surely induce debtors with available goods to pay out the bailiff before he sold. The figures regarding the enforcement of the 17,280 judgments referred to in Appendix D appeared to us to be very relevant to the Society's claim that execution in the county court is unproductive. In 10,066 cases out of the 17,280 the creditor chose to issue execution; out of these 10,066 there were 8,939 in which execution was the only method of enforcement used; in the other 1,127 the judgment summons was used as well. (Doubtless execution was abortive in those cases.) In the 8,939 cases no less than 5,769 were substantially paid in full within 20 months of the judgment, whilst a further 164 were up to date on instalment orders which were still running. This left 3,006 shown by the court records to be unpaid or partly paid. Hence, out of 10,066 cases where execution was issued, it was successful in at least 5,933 cases, whilst in a number of the others some payments would have been made on account, or payments made in full or in part out of court and not notified to the court, or settlements arranged out of court (see para. 11). Having regard to the normal type of county court debtor, and to the inherent difficulties in any system of execution against goods, we do not regard these results as unsatisfactory or as justifying the allegations of general inefficiency originally made by The Law Society.

62. An examination of the figures in Appendix D indicates that the results of execution are much less successful as the judgments get larger. Of the 10,066 judgments on which execution was issued, 4,146 were for £5 or under, 5,549 from £5–£40, and 371 over £40. The numbers of successful cases of execution shown in each class were 3,244 (78 per cent.) under £5; 3,017 (54 per cent.) between £5–40, and 158 (42 per cent.) over £40. This brings us to the main argument advanced by The Law Society and solicitors supporting them, namely, that a comparison between the Sheriff's officer and the bailiff was clearly in favour of the former. It is, of course, only in the larger cases that this comparison can be made and it is in those cases that the experience of solicitors gives their opinions greater weight.

* * * * *

Service of a Judgment Summons

89. The results of that examination* show that out of 2,082 summonses given to the bailiffs to serve 1,647 (79 per cent.) were served in time, and that in over half the cases not served in time there was a good explanation (e.g., 'defendant left address given'). The figures for one court taken separately showed that less than 50 per cent. were served in time but that was an exceptional case as we examined similar figures at a number of other courts and nowhere else did we find such a poor result. Usually the percentage 'not served' in time was about 20 per cent., and in over half of them there were good explanations. The same figures did not confirm The Law Society's allegations that reputable enquiry agents succeed in serving in 95 per cent. of cases as only 77 per cent. of the summonses served by solicitor or agent were served in time compared with 79 per cent. by the bailiffs. In their letter dated 16th July, 1956, in Appendix A, the Society deal further with this point."

* That is, of all judgment summonses due for hearing in the last two months of 1955 at three county courts specifically complained of.—Ed.

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

Progress of Bills

Read First Time:—

Matrimonial Proceedings (Magistrates' Courts) Bill [H.L.] [27th June.

To consolidate the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, and related enactments, with corrections and improvements made under the Consolidation of Enactments (Procedure) Act, 1949.

National Health Service Contributions Bill [H.C.] [7th June.

Read Second Time:—

Aberdeen Corporation Order Confirmation Bill [H.C.] [27th June.
Agriculture Bill [H.C.] [25th June.
Barry Corporation Bill [H.C.] [25th June.
British Transport Commission Bill [H.C.] [25th June.
Geneva Conventions Bill [H.L.] [25th June.
Housing and Town Development (Scotland) Bill [H.C.] [27th June.
London County Council (Money) Bill [H.C.] [27th June.
Matrimonial Causes (Jurisdiction) Bill [H.L.] [27th June.
Portslade and Southwick Outfall Sewerage Board Bill [H.C.] [27th June.

Read Third Time:—

Aberdeen Harbour (Superannuation) Order Confirmation Bill [H.C.] [27th June.
Baird Trust Order Confirmation Bill [H.C.] [27th June.
Finsbury Square Bill [H.L.] [26th June.
Glasgow Corporation Order Confirmation Bill [H.C.] [27th June.
Kilmarnock Corporation Order Confirmation Bill [H.C.] [27th June.
University of Exeter Bill [H.C.] [26th June.

HOUSE OF COMMONS

A. Progress of Bills

Read Second Time:—

Durham County Council (Barmston-Coxgreen Footbridge) Bill [H.L.] [25th June.

Read Third Time:—

Advertisements (Hire-Purchase) Bill [H.C.] [28th June.
Legitimation (Re-registration of Birth) Bill [H.C.] [28th June.
National Health Service (Amendment) Bill [H.C.] [28th June.
Parish Councils (Miscellaneous Provisions) Bill [H.C.] [28th June.
Registration of Births, Deaths and Marriages (Navy, Marines and Service Civilians) (Overseas) Bill [H.C.] [28th June.
Representation of the People (Amendment) Bill [H.C.] [28th June.

Superannuation Bill [H.C.] [27th June.
Thermal Insulation (Industrial Buildings) Bill [H.C.] [28th June.

In Committee:—

Children and Young Persons (Registered Clubs) Bill [H.C.] [28th June.
Finance Bill [H.C.] [27th June.

B. QUESTIONS

LEGAL AID

The ATTORNEY-GENERAL refused to amend the basic figures in the Legal Aid and Advice Act and the Assessment of Resources Regulations so as to take into account the changed economic circumstances since they came into force. The Advisory Committee itself had said it was satisfied that these regulations broadly did not prevent litigants getting the assistance which they should. [25th June.

BUILDING SOCIETIES

Mr. PETER THORNEYCROFT said that the Chief Registrar of Friendly Societies was at present investigating the affairs of some building societies which had been started or revived and their funds used for the commercial purposes of the directors, to determine whether or not they should be directed to refrain from inviting further subscriptions from members of the public. [25th June.

RENT ACT (FORMS)

Mr. H. BROOKE said that tenants as well as landlords should themselves obtain any forms they needed for the purposes of the Rent Act. The booklet "The Rent Act and You," published by H.M.S.O., contained a list of the prescribed forms and stated that they could be bought at the principal booksellers and stationers. In addition he had asked local authorities, by circular, to compile a list of places in their areas where the forms could be bought. [25th June.

YOUNG OFFENDERS (ATTENDANCE CENTRES)

Mr. R. A. BUTLER said that attendance centres were provided by the Secretary of State under powers conferred by the Criminal Justice Act, 1948, and were managed on his behalf by local agents, usually the police. They were attended on Saturdays, normally for two hours at a time, by boys not less than twelve nor more than seventeen years of age who had been ordered by the courts to attend for an aggregate of up to twelve hours under each order.

The Cambridge University Department of Criminal Science had been making a study of the results of attendance centre treatment but the research had not yet been concluded. [27th June.

TOWN AND COUNTRY PLANNING ACT, 1954 (CLAIMS)

Mr. H. BROOKE stated that by the middle of June, 1957, virtually all the claims likely to be made under Pt. V of the Town and Country Planning Act, 1954—i.e., in respect of planning decisions given before 1st January, 1955—had been received; they totalled 7,125, and 6,892 had been settled. Part V claims, being in respect of old decisions, were given priority over claims under Pt. II—i.e., those in respect of planning decisions given on or after 1st January, 1955. Of the latter, 9,866 claims had been received by the middle of June and 6,901 had been settled. Part II claims continued to come in at an average of nearly 100 cases per week, but the arrears were nevertheless being steadily overtaken. [28th June.

MOCK AUCTIONS

Mr. R. A. BUTLER stated that provisions requiring the registration of premises used for auctions were contained in the Brighton Corporation Act, 1954, and the Croydon Corporation, the Leeds Corporation and the Rhyl Urban District Council Acts, 1956, and it was open to the local authority of any other area where mock auctions presented a problem to promote a local Bill containing similar provisions. He could hold out no prospect of the Government introducing general legislation. [28th June.

STATUTORY INSTRUMENTS

British Film Fund Agency (Appointed Day) Order, 1957. (S.I. 1957 No. 1055 (C. 8).)

British Film Fund Agency Regulations, 1957. (S.I. 1957 No. 1056.) 5d.

Cinematograph Films (Collection of Levy) Regulations, 1957. 5d.

Cinematograph Films (Distribution of Levy) Regulations, 1957. 8d.

County Court Districts (Windsor and Slough) Order, 1957. (S.I. 1957 No. 1045.)

This order, coming into operation on 19th July, provides that the Windsor County Court shall cease to be held at Windsor and shall be held at Slough by the name of the Slough County Court.

Doncaster By-Pass Special Road Scheme, 1957. (S.I. 1957 No. 1024.) 5d.

Education Authority Bursaries (Scotland) Regulations, 1957. (S.I. 1957 No. 1059 (S. 56).) 8d.

Exchange of Securities Rules, 1957. (S.I. 1957 No. 1032.) 5d.

Import Duties (Exemptions) (No. 7) Order, 1957. (S.I. 1957 No. 1053.)

Local Government (Financial Loss Allowance) Regulations, 1957. (S.I. 1957 No. 1068.) 5d.

Local Government (Travelling Allowances, etc.) (Scotland) Amendment Regulations, 1957. (S.I. 1957 No. 1089 (S. 60).)

London–Carlisle–Glasgow–Inverness Trunk Road (Glen Falloch Diversion) Order, 1957. (S.I. 1957 No. 1057 (S. 54).) 5d.

London–Edinburgh–Thurso Trunk Road (Doncaster By-Pass, Northern Extension) Order, 1957. (S.I. 1957 No. 1025.)

National Gallery (Lending outside the United Kingdom) (No. 1) Order, 1957. (S.I. 1957 No. 1063.)

National Health Service (Travelling Allowances, etc.) (Scotland) Amendment (No. 2) Regulations, 1957. (S.I. 1957 No. 1088 (S. 59).) 5d.

National Insurance (Industrial Injuries) (Benefit) Amendment Regulations, 1957. (S.I. 1957 No. 1037.) 5d.

Draft National Insurance (Married Women) Amendment Regulations, 1957. 6d.

Registration of Independent Schools (Scotland) Regulations, 1957. (S.I. 1957 No. 1058 (S. 55).) 5d.

Rent Restrictions (Scotland) Regulations, 1957. (S.I. 1957 No. 1044 (S. 53).) 1s. 8d.

Retention of Cables under Highways (County of Cornwall) (No. 2) Order, 1957. (S.I. 1957 No. 1033.) 5d.

Safeguarding of Industries (Exemption) (No. 5) Order, 1957. (S.I. 1957 No. 1054.) 5d.

Stopping up of Highways (County Borough of Bootle) (No. 1) Order, 1957. (S.I. 1957 No. 1046.) 5d.

Stopping up of Highways (City and County Borough of Coventry) (No. 4) Order, 1957. (S.I. 1957 No. 1013.) 5d.

Stopping up of Highways (County of Essex) (No. 10) Order, 1957. (S.I. 1957 No. 1021.) 5d.

Stopping up of Highways (County of Glamorgan) (No. 4) Order, 1957. (S.I. 1957 No. 1022.) 5d.

Stopping up of Highways (County of Hereford) (No. 2) Order, 1957. (S.I. 1957 No. 1020.) 5d.

Stopping up of Highways (London) (No. 38) Order, 1957. (S.I. 1957 No. 1035.) 5d.

Stopping up of Highways (County of Middlesex) (No. 9) Order, 1957. (S.I. 1957 No. 1014.) 5d.

Supreme Court Funds Rules, 1957. (S.I. 1957 No. 1031 (L. 7).)

Coming into operation on 22nd June, 1957, this amendment of the Supreme Court Funds Rules, 1927, will enable the broker of the Supreme Court to deduct commission before paying brokerage to the Pay Office, in accordance with a new arrangement whereby the broker is remunerated on commission instead of a salary.

Transfer of Functions (Misdescription of Fabrics) Order, 1957. (S.I. 1957 No. 1077.) 5d.

Wages Regulation (Linen and Cotton Handkerchief, etc.) Order, 1957. (S.I. 1957 No. 1067.) 6d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

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